

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SLEEPY'S, LLC

Docket No.:

Plaintiff,

-against-

COMPLAINT

MATTRESS FURNITURE AND SUPPLY, LLC

Defendant.

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Plaintiff, SLEEPY'S, LLC ("SLEEPY'S"), by its attorneys, Elovich and Adell, as and for its complaint against defendant(s) MATTRESS FURNITURE AND SUPPLY, LLC ("MFAS") respectfully alleges as follows:

1. At all times relevant hereto, plaintiff SLEEPY'S was and still is a limited liability company organized and existing under the law of the State of Delaware, with its principal place of business located at 1000 South Oyster Bay Road, Hicksville, New York, 11801 and engaged in, among other things, the sale of mattresses and bedding accessories.
2. Upon information and belief, at all times relevant hereto, defendants Mattress Furniture and Supply, (hereinafter "MFAS") was and still is a limited liability company organized and existing under the laws of the State of Illinois, with its principal place of business located at 1815 Hicks Road, Rolling Meadow, IL 60008, and engaged in the purchase, sales, transportation and distribution of mattresses.
3. Plaintiff SLEEPY'S and defendants MFAS are citizens of different states within the meaning of the statutes relevant to this Court's exercise of subject matter jurisdiction.

4. The amount in controversy in this action exceeds \$75,000.00.
5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) in that the parties are citizens of different states and the amount in controversy exceeds \$75,000.00.

**ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

6. On or about February 13<sup>th</sup>, 2015 defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #3046. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

7. On or about February 13, 2015 defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #642823. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

8. On or about February 13<sup>th</sup>, 2015, defendants MFAS purchase mattress products and goods from plaintiff SLEEPY'S under BOL #1411. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

9. On or about February 22, 2015, defendants MFAS purchased mattress

products and goods from plaintiff SLEEPY'S under BOL #5057. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

10. On or about February 23, 2015 defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5041-1. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

11. On or about February 24, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5040-2. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

12. On or about February 25, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5040-5. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

13. On or about March 1, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5040-6, 5040-7. The Defendants arranged to pick up the products from a designated location with the understanding that they

were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

14. On or about March 2, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5040-5, 5040-8, 5114-1, 5114-2. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

15. On or about March 3, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5108-1, 5108-2. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

16. On or about March 4, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5108-2, 5108-3, 5114-3. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

17. On or about March 5, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5108-5, 5114-4. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

18. On or about March 6, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5108-8, 5108-7. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

19. On or about March 13, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5716-1, 5716-2, 5715-1, 5715-2. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

20. On or about March 14, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5716-3, 5716-4. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

21. On or about March 15, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL # 5716-5, 5720-2, 5713-2, 5713-3, 5726-1, 5726-2. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

22. On or about March 16, 2015, defendants MFAS purchased mattress

products and goods from plaintiff SLEEPY'S under BOL #5726-3, 5726-4. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

23. On or about March 18, 2015, defendants MFAS purchased mattress

24. products and goods from plaintiff SLEEPY'S under BOL #5717-1, 5713-3, 5716-6, 5713-4, 5716-7, 5726-5, 5726-6. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

25. On or about March 19, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5713-5, 5717-2, 5716-8, 5716-9, 5726-7, 5726-8. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

26. On or about March 20, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5713-6, 5726-9, 5726-10. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

27. On or about March 21, 2015, defendants MFAS purchased mattress

products and goods from plaintiff SLEEPY'S under BOL #5726-11, 5726-12. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

28. On or about March 22, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5726-12, 5726-13. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

29. On or about March 27, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5742-2. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

30. On or about March 28, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5742-3, 5726-15, 5726-16. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

31. On or about June 1, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5720-2, 5726-17. The Defendants arranged to pick up the products from a designated location with the understanding that they

were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

32. On or about June 2, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5720-3. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

33. On or about June 3, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5720-4. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

34. On or about June 4, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5720-5, 5726-20. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

35. On or about June 5, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5726-21. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

36. On or about June 8, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5720-6, 5726-23, 5726-22. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

37. On or about June 9, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5720-7, 5726-25, 5726-24. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

38. On or about June 10, 2105, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5726-26. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

39. On or about June 11, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5726-28, 5726-11. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

40. On or about June 12, 2015, defendants MFAS purchased mattress

products and goods from plaintiff SLEEPY'S under BOL #5742-4, 5726-30, 5726-29. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

41. On or about June 15, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5726-31, 5726-32. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

42. On or about June 16, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5726-19, 5726-18. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

43. On or about June 19, 2105, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5742-5. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

44. On or about June 26, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #6016. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be

billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

45. On or about June 29, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #6018-1. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

46. On or about June 30, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #6018-2, 6019-2, 6019-1, 6017-1. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

47. On or about July 2, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #6017-2. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

48. On or about July 27, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #6196-6. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

49. On or about July 29, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #6202, 6207-1. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

50. On or about July 30, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #6201-1, 6197, 6199, 6207-2, 6207-3. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

51. On or about July 31, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #6201-2. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

52. On or about August 2, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #6196-1, 6196-2. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

53. On or about August 3, 2015, defendants MFAS purchased mattress

products and goods from plaintiff SLEEPY'S under BOL #6196-3, 6196-4. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

54. On or about August 4, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #6196-5. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

55. On or about October 19, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #4998. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

56. On or about October 23, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5049-1. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

57. On or about October 24, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5049-2. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to

be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

58. On or about October 25, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5049-3. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

59. On or about October 26, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5049-4, 5049-5. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

60. On or about October 27, 2015, defendants MFAS purchased mattress products and goods from plaintiff SLEEPY'S under BOL #5049-6. The Defendants arranged to pick up the products from a designated location with the understanding that they were going to be billed for same. Defendants have failed to pay for this order and the amount remains outstanding together with costs and interest therein.

61. The total amount owed for products and goods ordered and received by defendants MFAS, as described above and incorporated herein for reference totaled \$1,211,791.65.

63. To date, MFAS has paid in periodic payments a total of \$582,768.00. Said amount has been credited towards the total amount owed. Presently, MFAS owes the balance of

\$629,023.65. Said amount does not reflect, costs, legal fees, late fees, penalties or interest accruing from the late payments.

64. SLEEPY'S has repeatedly billed, and otherwise demanded payment from, MFAS.

65. MFAS has not objected to those bills and demands, and, indeed, has made payments towards the bills outlined above.

**AS AND FOR A FIRST CAUSE OF ACTION**

66. Plaintiff SLEEPY'S repeats and realleges paragraphs 1 through 65 hereof as if set forth herein in full.

67. By reason of the foregoing, defendants MFAS has breached its agreement with SLEEPY's.

68. Plaintiff SLEEPY'S has performed all terms and conditions required of it.

69. By reason of the foregoing, plaintiff SLEEPY'S has been damaged in the sum of \$629,023.65, together with costs.

**AS AND FOR A SECOND CAUSE OF ACTION**

70. Plaintiff SLEEPY'S repeats and realleges paragraphs 1 through 65, 67, 68 and 69 hereof as if set forth herein in full.

71. By reason of the foregoing, an account has been taken and stated as between plaintiff SLEEPY'S and defendants MFAS.

72. Defendant MFAS has been unjustly enriched by receiving goods, selling them and not paying the plaintiff for same.

73. By reason of the foregoing, plaintiff SLEEPY'S has been damaged in the sum of

\$629,023.65, together with costs.

**AS AND FOR A THIRD CAUSE OF ACTION**

74. Plaintiff SLEEPY'S repeats and realleges paragraphs 1 through 69, 70, 71, 72 and 73 as if set forth herein in full.

75. Upon information and belief the defendants MFAS, together with the corporate officers, directors, managers and trustees, with intent to defraud, and deceive plaintiff SLEEPY's, ordered, purchased and sold products that they intentionally defaulted on.

76. Upon information and belief defendants MFAS have defaulted on bills to other vendors and intentionally did so with an intent to pay a lower sum than that which was bargained for.

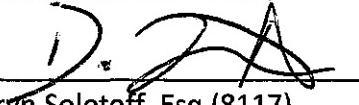
77. That by reason of the intentional fraud and deceit the directors, managers, trustees and corporate officers should be held personally liable for the debt incurred on behalf of defendants MFAS.

78. Upon information and belief MFAS colluded and worked in concert to default and defraud plaintiff.

WHEREFORE, plaintiff SLEEPY's demands judgment against defendants MFAS in the amount of \$629,023.65, together with costs; and for such other, further and different relief as the Court deems just or proper, including statutory interest from March 1, 2015 and the costs and disbursements hereof.

Dated: March 30, 2016

ELOVICH AND ADELL ESQS

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